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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,889	03/15/2005	Karl J. Wood	GB 020151	5830

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS  
P.O. BOX 3001  
BRIARCLIFF MANOR, NY 10510

EXAMINER
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SAGER, MARK ALAN

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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03/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/527,889	<b>Applicant(s)</b> WOOD, KARL J.	
	<b>Examiner</b> M. A. Sager	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-11 is/are rejected.
- 7) ☐ Claim(s) 4-7, 12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/9/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on Nov 9, 2005 was considered by the examiner; however, it is noted that the other foreign reference to Namco cited in international search report was not further considered at least since it was neither listed on IDS nor received as a reference.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 13 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, a computer program is non-statutory unless it is stored on a computer readable medium that can be implemented in a processing device so as to enable its functionality and thus at present the claim is non-statutory subject matter. Essentially, a computer program is non-statutory due it being non-functional descriptive material (similar to musical notes being coding of a song) as being merely coding that is not stored on a computer readable media so as to enabled in conjunction with a processor/computer and thus lacks producing a concrete, tangible or useful result therefrom. See *State Street*, 149 F.3d at 1374-1375, 47 USPQ 2d at 1602. See *AT&T Corp. V. Excel Comm. Inc.*, 50 USPQ2d 1447, 1452 (Fed. Cir. 1999). Also, the PTO web site at <http://www.uspto.gov/web/patents/guides.htm> provides guidance for claiming inventions relating to program code in Examination Guidelines for Computer-Related Inventions & Training Materials.

***Claim Objections***

4. The claims 8-12 are objected to because they include reference characters (line 1 of claim 8) which are not enclosed within parentheses.

Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).

5. Claims 6-7 and 12-13 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Thus, the cited claims have not been further treated on the merits.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, and 8-10 are rejected under 35 U.S.C. 102(b) as being anticipated by the Ricos (EP 962900 A2). Ricos discloses a computer game device teaching steps/features of method and computer game system (fig. 7-8) including computer readable storage means (abstract, ref. 35, 72) arranged to store a computer game program (11:34), a processor (ref 71, 81), arranged to load/loading computer game program from storage means (11:15-12:30), to execute/executing computer game program (11:30-48), to receive/receiving instructions from a user interface (ref 73), and to change/changing the game status according to instructions (11:30-12:33) and

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charging means for charging a user to store game status such as a coin or bill slot (11:15-19, 35-44, 12:10-21, ref. 76), wherein the system is integrated computer device (fig. 7), wherein the system has a distributed architecture communicating via the internet (fig. 11-13).

8. Claims 1, 8, 10-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Olson (6080062). Olson discloses a method and computer game system for operating a computer game comprising computer readable storage means (fig 1-4), arranged to store computer game program (fig 5A-7), a processor (ref 11, 20, 40, 43, 45) arranged to load/loading said computer game program from said storage means (fig 1-4), to execute/executing said computer game program (fig 5A-7), to receive/receiving instructions from a user interface (key input), to change/changing the game status according to instructions (4:12-15, 5:47-53, ref. 13), charging means for charging a user to store said game status via credit/debit a user's account (ref. 44), wherein said system has a distributed architecture communicating via the internet (fig 1-4).

### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 2-3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ricos in view of Diablo game. Ricos discloses claimed features/steps (sic) including pausing game status for a predetermined period of time (12:16-19), but lacks in response to a specific instruction from user interface and further changing the game status according to instructions after step (f). Entering a pause or continue [un-pausing] game status by user input in a real-time game is old and well known as shown by Diablo (pg 17) for allowing user to pause play of a game at their leisure. Thus, it would have been obvious to an artisan at a time prior to the invention to add in response to a specific instruction from user interface and further changing the game status according to instructions after step (f) as taught by Diablo to improve the computer game device of Ricos for the predictable result of allowing user to pause and continue [un-pause] play of a game. The combination of Ricos in view of Diablo provides same structure performing same function.

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ricos in view of Rhoads (5051822). Ricos discloses claimed steps/features (sic) except debits a user's account. Charging a user's account is old in gaming as taught by Rhoads (4:46-50) for remote billing of service to user account. Therefore, it would have been obvious to an artisan at a time prior to the invention to add debits a users account as taught by Rhoads to improve the computer game device of Ricos for the predictable result of remote billing of service to a user account.

***Allowable Subject Matter***

13. Claim 4-5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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14. The following is a statement of reasons for the indication of allowable subject matter: the various charging claimed appears allowable over conventional business model.

***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. A. Sager/  
Primary Examiner, Art Unit 3714